S. B. C. W. P. NO.2148/2004
(Mst.Goma Devi & Anr. Vs. The Debt Recovery Tribunal & Ors.)

DATE OF ORDER : 05.08.2004

HON'BLE SHRI N.P.GUPTA,J.

Mr.S.N.Tiwari, for the petitioner.

By this writ petition, the petitioner seeks to restrain the respondents from auctioning the properties belonging to the petitioners with a direction to the respondents to enter into settlement with the borrowers by rescheduling the entire loan account by reducing, or waiving the interest component, and further by decreasing the rate of interest for future, and by fixing easy installments.

From the averments of the writ petition, it transpires that the petitioners are the guarantors for the loan, advanced to M/s.P.L.Industries, which was a cash credit facility for Rs.40,00,000/-. According to the averments in the writ petition, it was in the year 2000, that the bank had issued general notice publishing the outstandings against the borrower, and the fact of the properties mentioned therein belonging to the petitioners to be mortgaged with the bank. That notice has been produced as Annexure-1. Then in para 5, it is alleged that recently, the petitioners came to know upon reading of the newspaper, Rajasthan Patrika dt. 7.5.04 that the Debt Recovery Tribunal, Jaipur had issued an auction notice regarding auction of their properties, and the auctions are to be held on 10.5.2004, and 11.5.2004. Then in para 8, it has been pleaded that the partners of the said firm, M/s.P.L.Industries are having bonafide intentions to deposit the outstanding amount in installments, provided a reasonable time is given to them, and that, though their intentions were clear in depositing the outstanding amount, but they have been unnecessarily harassed by the Branch Manager. Then in para 9, the financial and family difficulties of the petitioners have been cataloged, and it has been pleaded that in such hard cases, the bank also considers to waive interests by entering into one time settlement with the borrowers by way of fixing fresh installments. It is, with these factual averments, that the aforesaid reliefs have been claimed.

I find from Annexure-2, the auction notice, that it has been issued in recovery proceeding no.164/02 by the Recovery Officer of the Debt Recovery

Tribunal. From this, it appears that the Debt Recovery Tribunal must have issued a certificate of recovery, as contemplated by Section 19(22) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to, as the 'Act'). The Recovery Officer is proceeding to make recovery pursuant thereto in accordance with the provisions of the Act. It is a different story that the petitioners have not made a complete disclosure of facts, as to what were the proceedings, initiated before the Debt Recovery Tribunal, how did the petitioners participate therein, and what was the out come, nor have they produced the copy of the order, that may have been passed by the Debt Recovery Tribunal for the recovery, on the application that may have been filed by the bank under Section 19 before the Tribunal. Even this is not disclosed, as to when the bank initiated proceedings before the Tribunal, and when it was decided.

In these circumstances, since the order of the Debt Recovery Tribunal, that may have been passed consequent whereupon, the recovery certificate has been issued, is appealable under Section 20, and it is not disclosed, as to whether any appeal had been filed, or not, and if filed, what was the out come. Simply because, pursuant to the recovery certificate, the recovery proceedings are initiated by the Recovery Officer, and the petitioners feel some financial, or family difficulties, it can hardly furnish any ground to the petitioner to maintain the writ petition for the prayers made in the writ petition.

Learned counsel referred to a judgment of this Court in “M/s. Mewar Textiles Mills Ltd. Vs. The Bank of Rajasthan Ltd. & Anr.” reported in 2003(3) RLR 197. Suffice it to say that, that was a writ filed against the order of the Debt Recovery Tribunal dt. 12.9.2001, whereby during pendency of the proceedings for liquidation, the Debt Recovery Tribunal declined to stay the proceedings pending before the Debt Recovery Tribunal, and this Court ultimately found that the petitioners had alternative remedy, and writ was held to be not maintainable. In the present case, the facts are entirely different, being the one, as narrated above. Thus, this case is of no help to the petitioners.

Thus, the writ petition has no force, and is hereby dismissed summarily.

(N.P.GUPTA),J.

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